

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SEAN XAVIER HOLCOMBE

Plaintiff,

v.

JAMES KENNETH LEE,

JJBADS TRUCKING, LLC AND

JIMMY EDGAR HIPES

Defendant.

CASE NO. 4:21-CV-03968

DEFENDANT'S NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants James Kenneth Lee, JJBads Trucking, LLC and Jimmy Edgar Hipes (“Defendants”) hereby remove this civil action from the 133rd Judicial District Court of Harris County, Texas where it is currently pending as Cause Number 2021-55339 (the “Underlying Lawsuit”), to the United States District Court for the Southern District of Texas, Houston Division, and shows the following:

A. INTRODUCTION

1. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a) on the grounds that complete diversity exists between all parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.
2. Plaintiff Sean Xavier Holcombe (“Plaintiff”) is a citizen of Harris County in the State of Texas.
3. Defendants James Kenneth Lee is a citizen of Arizona.
4. Defendant JJBads Trucking, LLC is a foreign corporation incorporated in Arizona with its principal place of business in Kingman, Arizona.

5. Defendant Jimmy Edgard Hipes is a citizen of Arizona.

6. On August 31, 2021, Plaintiff filed suit against Defendants in the 133rd Judicial District Court of Harris County, Texas, Cause No. 2021-55339, asserting negligence on the part of Defendants and *respondeat superior* on the part of the corporate Defendants.

7. Defendant Jimmy Edgard Hipes was served with the Underlying Lawsuit on November 12, 2021. Defendant files this Notice of Removal within the 30-day time period required by 28 U.S.C. § 1446(b)(1). *Board of Regents of University of Texas System v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007).

B. BASIS FOR REMOVAL

8. Removal is proper under 28 U.S.C. § 1332(a) because Plaintiff's suit is a civil action in which this Court has original jurisdiction over the parties, based upon diversity jurisdiction under 28 U.S.C. § 1332. This action is one which is removable to this Court pursuant to the provisions of 28 U.S.C. §1441(b) because Plaintiff is a citizen of the State of Texas and the Defendants are (1) individual citizens of Arizona and (2) an Arizona limited liability company with its principal office in Arizona.

9. For diversity purposes, a person is considered a citizen of the state where that person is domiciled. Additionally, for diversity purposes, a corporation is a citizen of both the state in which it was incorporated and the state in which it has its principal place of business. 28 U.S.C. §1332(c)(1). Because the Plaintiff does not share citizenship with any of the Defendants in any state, removal is proper on diversity grounds.

10. The Defendants are now and were at the time the removed action was commenced, diverse in citizenship from the Plaintiff. 28 U.S.C. § 1332. Accordingly, because this notice of

removal has been filed within thirty days after the receipt of a copy of the initial pleading setting forth the claim for relief, this removal is proper and timely under 28 U.S.C. §1446(b).

11. The amount in controversy in this action exceeds, exclusive of interest and costs, the sum of Seventy-five Thousand and No/100 Dollars (\$75,000.00). Plaintiff's Original Petition, attached to this Notice, alleges damages "over \$20,000.00 but less than \$1,000,000.00" This Court, however, may determine that the damage claims in the complaint exceed the minimum amount if (1) it is apparent on the face of the complaint that the amount of the Plaintiff's damages are likely to be above the minimum amount; (2) the Defendants offer evidence that the claim would exceed the minimum amount, based on direct knowledge of the claim; and (3) the Plaintiff does not contest removal with a sworn affidavit that the damages are below the minimum amount. *DeAguilar v. Boeing Co.*, 11 F.3d 55, 57 (5th Cir. 1993). Based upon the evidence attached to this Notice of Removal supporting that the claim exceeds the minimum amount, the burden now shifts to the Plaintiff to demonstrate otherwise before remand would be proper on this ground. *See DeAguilar v. Boeing Co.*, 47 F.3d 1404 (5th Cir. 1995).

12. All Defendants who have been properly joined and served consent to the removal of this case to federal court. 28 U.S.C. § 1446(b)(2)(A).

13. Copies of all pleadings, process, orders, and other filings in the state-court suit are attached to this notice as required by 28 U.S.C. § 1446(a).

14. Venue is proper in this district under 28 U.S.C. § 1441(a) because the state court where the Underlying Lawsuit is pending is located in this district.

15. Defendant will promptly file a copy of this Notice of Removal with the clerk of Harris County, Texas where the Underlying Lawsuit is pending.

C. JURY DEMAND

16. Defendants demand a trial by jury.

D. CONCLUSION

17. Defendant requests that this Notice of Removal be accepted for filing and that the Court remove the Underlying Lawsuit to the Southern District of Texas, Houston Division.

Respectfully submitted,

COX P.L.L.C.

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing instrument has been served to all attorneys of record in the above-entitled and numbered cause, in accordance with the Federal Rules of Civil Procedure on this the 6th day of November 2021.


Lauren Lopez

DECLARATION UNDER PENALTY OF PERJURY

“I Lauren Lopez, under penalty of perjury, declare that the foregoing Notice and the facts therein are true and correct.”

EXECUTED on December 3, 2021.

Is Lauren Lopez
Lauren Lopez